Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	)	
	)	
Interconnection Between Local Exchange	)	
Carriers and Commercial Mobile	)	CC Docket No. 95-185
Radio Service Providers	)	
	)	

To: The Commission

COMMENTS OF CELPAGE INC. ON INTERCONNECTION BETWEEN LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS

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SUMMARY

The FCC's proposals for interconnection compensation arrangements for local exchange carriers and commercial mobile radio service providers are a good starting point in developing fair and reasonable regulations. The FCC's proposed bill and keep compensation arrangement for an interim period is not applicable for narrowband paging providers. There is no justification for the bill and keep arrangement because traffic flow for paging is virtually 100% LEC originated and CMRS terminated. The FCC should adopt a cost-based compensation arrangement for termination of LEC originated calls on narrowband paging facilities. Moreover, LECs should be required to pay the cost of entrance facilities connecting to paging providers' mobile telephone switching office. This approach is fair, reasonable, and non-discriminatory to the LEC and paging provider. Compensation arrangements should be set forth in agreements that are filed with the Commission and publicly available for inspection.

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COMMENTS OF CELPAGE, INC.

Celpage, Inc., through its undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Notice of Proposed Rule Making ("NPRM") adopted by the Commission in the above-referenced proceeding.[1]

I. General Comments

A. Statement of Interest

Celpage is the parent company of Pan Am License Holdings, Inc., a licensee of Private Carrier Paging ("PCP") and Radio Common Carrier ("RCC") facilities throughout the Commonwealth of Puerto Rico and the United States Virgin Islands.[2] Celpage has grown to become the largest paging company in Puerto Rico. Celpage has also been an active member of the Association for Private Carrier Paging ("APCP") virtually since its inception, and has previously been an interested party in FCC rule making proceedings pertaining to PCP and RCC

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[1] Notice of Proposed Rule Making, CC Docket No. 95-185, adopted December 15, 1995, released January 11, 1996 (FCC 95-505).

[2] With the implementation of Sections 3(n) and 332 of the Communications Act in the CMRS Second Report and Order, 9 FCC Rcd 1411 (1994), PCP and RCC paging services were reclassified as commercial mobile radio services (CMRS).

paging issues, and the implementation of the commercial mobile radio service ("CMRS") rules.

The LEC-CMRS compensation arrangements proposed in the FCC's NPRM, specifically, bill and keep, are likely to have an immediate adverse impact on Celpage's economic livelihood in the paging business. Moreover, due to its practical experience in this field, Celpage is well-qualified to comment on the advantages and disadvantages of the proposed compensation arrangements on the narrowband paging industry. Thus, Celpage has standing as a party in interest to file formal comments in this proceeding. Celpage specifically addresses how the FCC's proposals impact narrowband paging providers.

B. Summary of NPRM

1. FCC's Goals

In its NPRM, the FCC continues to review its current interconnection policies between Local Exchange Carriers (LEC) and CMRS providers, to determine whether they do enough to advance the public interest. NPRM at ¶ 4. The FCC states that its overriding goal in this proceeding is to "maximize the benefits of telecommunications for the American consumer and for American society as a whole." Id. The FCC emphasizes the important benefits of interconnection in the telecommunications industry. First, interconnection allows competition with incumbent LECs for services offered to the public and the prices, qualities, and features of those services. NPRM at ¶ 9. Second, interconnection allows subscribers of one network to obtain access to subscribers of all other interconnected networks. Id. Finally, through its interconnection rules, the FCC seeks to encourage CMRS development and increase competition in the wireless and wireline marketplaces.

2. FCC's Proposals

To achieve its stated goals, the FCC seeks to establish compensation arrangements for interconnection between LECs and CMRS providers. The FCC tentatively concludes that to ensure continued development of wireless services, it is necessary to adopt interim policies governing rates charged for LEC-CMRS interconnection. Specifically, the FCC tentatively concludes that interconnection rates for local switched facilities and connections to end users should be priced on a "bill and keep" basis. Id. at ¶ 15 Second, the FCC proposes that for dedicated transmission facilities provided by LECs to connect LEC and CMRS networks, the rates should be set based on existing access charges for similar transmission facilities. Id.

The FCC also tentatively concludes that information about interconnection compensation arrangements should be made publicly available. The FCC seeks comment on whether this should be accomplished through tariffs or public disclosure of contractual arrangements. Finally, the FCC seeks comments regarding how to implement these policies, and tentatively concludes that it has authority to do so. In its Order granting a one week extension to file comments in this proceeding, the FCC also requested comments on the implications of the Telecommunications Act of 1996 on the Commission's proposals and the jurisdictional issues raised in the NPRM.[3]

By these comments, Celpage hopes that it may be of some assistance in achieving the Commission's goals and assisting it to adopt fair and reasonable interconnection compensation policies for narrowband paging companies. At the outset, Celpage commends the FCC for

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[3] See, Order and Supplemental Notice of Proposed Rule Making, FCC 96-61, Released February 16, 1996.

attempting to adopt fair, non-discriminatory, and reasonable interconnection policies. The current policies evidently have not done enough to deter the sort of unfair, restrictive interconnection arrangements that are prevalent throughout the United States today.

Celpage believes that for the FCC to reach its stated goals, it is necessary to adopt separate interim interconnection compensation policies for broadband and narrowband providers. In brief, Celpage suggests that the FCC adopt a cost-based compensation arrangement for termination of LEC originated calls on narrowband facilities. LECs should also be required to pay the costs of entrance facilities connecting to the paging providers' mobile telephone switching office ("MTSO"). As for long-range interconnection rate policies, Celpage submits that the FCC should adopt a cost-based formula that can be applied across the board for all CMRS providers.

II. Compensation for Interconnected Traffic between LECs and CMRS Providers Networks

A. Compensation Arrangements

1. Existing Compensation Arrangements

Celpage commends the FCC for attempting to develop interconnection compensation policies for LEC-CMRS interconnection. The first step in revising new rules is to acknowledge that the current interconnection policies do not do enough to ensure fair interconnection compensation, terms, and conditions for CMRS providers.

The current requirements for LEC interconnection stem from Section 201(a) of the Communications Act of 1934, as amended ("the Act"). Section 201(a) requires all common carriers upon reasonable request to establish physical connections with other carriers. 47 U.S.C. § 201(a). In the CMRS Second R&O,[4] the FCC expanded the interconnection obligation to all CMRS providers. In doing so, the FCC adopted the following interconnection requirements: (1) LECs and CMRS providers shall compensate each other for the reasonable costs incurred in terminating traffic on the basis of mutual compensation; (2) LECs shall establish reasonable charges for interstate interconnection provided to CMRS licensees; and (3) LECs shall make available the same type of interconnection arrangements that the LECs make available to any other carriers. Id. at ¶ 232-234. This is the first time that the FCC has addressed specific rates and cost-sharing arrangements for LEC-CMRS interconnection.

The statutory interconnection requirements have been obeyed to date far more in the breach than in the observance. Though these policies are a good start, they have been ineffective

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[4] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994) (CMRS Second R&O).

in achieving fair results for paging companies; LECs have obviously chosen to ignore their statutory obligations to compensate paging companies for calls terminated on the paging network.

In the context of narrowband paging, virtually 100% of calls are originated on LEC networks, and terminated on CMRS networks; the converse is rarely true, since most paging devices cannot originate a call. Under the current requirements, LECs are required to compensate paging companies for terminating these calls, based upon mutual compensation; this never happens. For example, in Celpage's local exchange area, contrary to mutual compensation requirements, the local exchange company charges Celpage for termination of LEC originated traffic. This and other examples are typical throughout the Country. These exorbitant and discriminatory interconnection rates constitute a de facto barrier to entry in the CMRS marketplace. Further, paging companies will never realistically compete with LECs in this discriminatory environment. In order to be true competitors for services and prices, paging companies must be able to achieve fair interconnection terms and compensation.

2. Pricing Proposals: Bill and Keep

In the NPRM, the FCC tentatively concludes that to advance its stated goals of competition and to maximize the benefits of the telecommunications industry, a "bill and keep" approach should be applied to local switching facilities and connections to end users, at least on an interim basis. NPRM at ¶ 15. Under bill and keep, neither interconnecting networks will charge the other for terminating traffic that originated on the other network. Id. at ¶ 60. Instead, each network recovers from its own end-users the cost of both originating traffic delivered to the other network and terminating traffic received from the other network.

The FCC's cited economic studies suggest that this approach is economically efficient if either of the following two conditions are met: (1) traffic is balanced in each direction, or (2) actual interconnection costs are so low that there is little difference between a cost-based rate and a zero rate. Id. at ¶ 61.

Neither of these conditions are met in paging. Almost 100% of traffic is originated from the LEC network and terminated by the narrowband provider. There is no "balance of traffic." Because of this unbalance, paging companies pay millions of dollars in interconnect charges to LECs every year; while the LECs enjoy a "free ride" on these billion-dollar CMRS networks. That imbalance is patently unfair and unlawful.

To achieve a fair and equitable result, narrowband providers should be permitted to charge reasonable fees for the use of their networks in terminating calls. In industry meetings regarding bill and keep, several parties representing the paging industry have suggested one possible formula for compensation: access charges (switching plus transport), minus the common carrier line (CCL) and transport interconnection charge (TIC) (sometimes referred to as the residual interconnection charge).

Another option is for paging companies to receive a fixed percentage of the amount charged by the LEC to its subscribers. For instance, a simple and administratively easy formula would be 10% of the message unit or per minute standard rate for local calls.

In addition, LECs should pay the entire cost of the entrance facilities to the narrowband network, since the traffic is mobile terminating. The entrance facilities should include all physical transmission circuits up to the CMRS MTSO

In adopting such an approach for narrowband, the FCC is not hindered from adopting

"bill and keep" for broadband providers. The use of different formulas for computing interconnect the cost allocations for narrowband and broadband services is perfectly consistent with FCC precedents. For example, in adopting different technical and operational rules for CMRS providers, the FCC stated that all substantially similar services do not need identical technical and operational rules, "especially if the imposition of such identical rules would require carriers to reconfigure their services in ways that could adversely affect their ability to compete."[5] Rather, the FCC emphasized giving substantially similar services the flexibility "to compete in whatever manner they choose." Id.

The same approach is relevant here. There is no need to establish rigid, inflexible compensation rules that do not take into account actual differences in traffic flow for broadband and narrowband communications. A single rate structure, in the interim, may not be possible or fair for all CMRS providers. Initially offering different interconnection formulas is perfectly consistent with the Congressional mandate to create regulatory symmetry for mobile services. In the long run, Celpage submits that interconnection rates should be cost-based, and broad enough to be applied for interconnection compensation for all CMRS providers.

B. Implementation of Compensation Arrangements

1. Negotiations and Tariffing

LECs are currently required to engage in good faith contractual negotiations over CMRS interconnection arrangements. Currently, the FCC does not require public disclosure of interconnection arrangements or interconnection tariffs. NPRM ¶ 82. The FCC tentatively

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[5] See, Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 7988, ¶ 78-79 (1994) (CMRS Third R&O)

concludes that to foster competition and advance the public interest, information about interconnection compensation arrangements should be made publicly available. NPRM ¶ 89.

Celpage agrees with the FCC's conclusion that interconnection agreements should be available for public inspection. Public disclosure of interconnection terms would help prevent discriminatory rates, terms and conditions. Celpage submits that interconnection agreements should be filed with the FCC, and the filing should be a non-fee procedure.

Celpage disagrees that tariffs should be filed for interconnection rates and services. Tariffs are administratively burdensome, costly, and preclude flexible, bilateral negotiations. Public disclosure of interconnection agreements would foster a level playing field; without the inherent disadvantages of tariffs.

2. Jurisdictional Issues

The Commission seeks comments on how to implement its interconnection policies. The FCC advances three options: (1) adopt a federal interconnection policy for interstate communications, serving only as a model for state commissions to voluntarily follow for intrastate services; (2) adopt a flexible interconnection policy for interstate and intrastate interconnection, giving state commission's wide latitude in adopting individual policies; or (3) adopt specific federal requirements for all interstate and intrastate interconnection arrangements. NPRM at ¶ 108-110. Option three would in effect preempt state interconnection regulations. Celpage submits that the FCC can and should impose mandatory interconnection compensation policies for all LEC-CMRS and CMRS-CMRS interconnection.

a. Section 332 (c)(3)(A) Preempts State Regulation

Section 332(c)(3)(A) of the Act provides that no state or local government shall have any

authority to regulate the entry of or the rates charged by any commercial mobile service. 47 U.S.C. § 332(c)(3)(A). Section 2(b) of the Act generally reserves to the states authority to regulate intrastate communications. 47 U.S.C. § 2(b). The Budget Act carved out an exception to the states' regulatory authority over intrastate communications to include Section 332. This seems to suggest that states no longer have plenary authority over all intrastate communications with regard to commercial mobile communications. Congress essentially removed the states' authority in the area of entry or rates charged by commercial mobile services. It surely can be inferred that the "rates charged by mobile services" includes interconnection charges assessed on CMRS providers, or charged by CMRS providers. That logical statutory interpretation would in effect bar states from regulating in this area. "[W]here Congress acts pursuant to a plenary power, it may specifically prohibit parallel state legislation, i.e., occupy or preempt, the field."[6]

Support for this conclusion can be found in the legislative history of Section 332. The House Report states that "the Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network."[7] Further evidence of federal intent to preempt this entire area of regulation can be found in Congress' decision to allow the FCC to forbear from enforcing specific Title II regulations against CMRS providers, under certain conditions. See, CMRS Second R&O at ¶ 124. Section 332(c)(1)(A) provides that the Commission may determine that any provision of Title II is not applicable for commercial mobile services, thereby giving the Commission wide latitude in its regulatory authority. 47

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[6] J. Nowak, R. Rotunda, & J. N. Young, Const. Law 267 (1978) (citation omitted).

[7] House Report on H.R. 2264 at 261 (1993).

U.S.C. § 332(c)(1)(A).

Moreover, Section 251(d)(3) of the Telecommunications Act of 1996, signed into law on February 8, 1996,[8] seems to preserve to the states only regulatory authority with regard to interconnection in instances in which any state regulation is not inconsistent with the requirements of Section 251 and does not substantially prevent the FCC from implementing the requirements of that section. Finally, Section 253 of the Telecommunications Act, entitled Removal of Barriers to Entry, states that "No state or local statute or regulation ... may prohibit or have the effect of prohibiting the ability of an entity to provide any interstate or intrastate telecommunications service." Section 253(e) states that: "Nothing in this section shall affect the application of Section 332(c)(3) to commercial mobile service providers." In summary, Congress does not appear to be altering the preemptive scope of the Commission's regulatory authority over CMRS providers.

b. State Regulation of Interconnection Rates Would Prohibit Entry in the CMRS Marketplace

In the CMRS Orders, Congress required the FCC to apply a comprehensive, consistent regulatory framework for mobile services. The underlying purpose of a single regulatory scheme was to promote competition by refocusing efforts away from strategies in the regulatory arena and toward technological innovation, service quality, competitive pricing and responsiveness to consumer needs.[9] To allow individual states to impose inconsistent

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[8] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[9] See, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54 Released July 1, 1994, ¶ 2 (1994) (Quoting CMRS Second R&O).

interconnection compensation regulations on CMRS's would contradict the Congressional mandate, and would substantially interfere with these Congressional objectives.

The states would, in essence, be creating barriers to entry in the CMRS marketplace. A nationwide CMRS provider would have to comply with conceivably 50 interconnection compensation policies, in 50 different states. CMRS providers would consciously avoid doing business, or not expand existing service in these states and local municipalities for the single purpose of avoiding inconsistent and onerous interconnection compensation regulations. The FCC must take this opportunity to declare that federal interconnection policy preempts inconsistent state regulation; any other action would be contrary to federal authority and policy.[10]

c. Inseverability

Paging is surely a mobile form of communications; the typical path of a page does not stop at state borders. For the last several years, more and more paging companies have been offering multi-state and nationwide paging service. It is difficult, if not impossible, to sever the intrastate and interstate aspects of a paging service. For example, in the instance where a caller in California is paging a person in California, these days the call is most likely to be routed through interstate facilities.

Because paging is inherently interstate in nature, pursuant to Section 201(a) of the Act, the FCC has authority to preempt interconnection between LEC and CMRS providers. For example, in Mobile Telecommunications Technologies Corp., the FCC preempted state

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[10] See e.g. Norlight Request for Declaratory Ruling, 2 FCC Rcd 132, 135, recon. denied, 2 FCC Rcd 5167 (1987) (FCC preempted Wisconsin PSC's regulation of an interstate fiber optic network finding that inter alia the PSC's restrictions improperly encroached on the federal statutory authority over interstate communication).

regulation of nationwide paging service on the basis that the interstate and intrastate components of the paging service were impossible to separate.[11] The FCC concluded: "Although the [Common Carrier] Bureau recognized that a page potentially could originate and terminate in the same state over MTel's nationwide paging system, the Bureau concluded that MTel's system does not permit the carrier to ascertain when or how frequently such intrastate pages may occur. " Id. at 1500. Based on these facts, the FCC concluded that the nationwide paging service was subject to exclusive federal jurisdiction. Id.

Preemption of state regulation is valid when interstate and the interstate components are inseparable, and would impede the Commission's authority over interstate service.[12] That is surely the case in the predominantly interstate paging business. State regulations would preclude the FCC from realizing its goals of competition and developing a nationwide wireless network; they should be preempted.

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[11] 6 FCC Rcd 1938 (1991), review denied 7 FCC Rcd 4061 (1992).

[12] See e.g. Louisiana Public Service Commission v. FCC, 476 U.S. 355, 375 n.4 (1986); NARUC v. FCC, 800 F.2d 422 (D.C. Cir. 1989).

III. Application of These Proposals

The FCC seeks comment on whether the proposed rules should be applied to a certain class of CMRS providers, or to all CMRS providers. NPRM at ¶ 107. Celpage submits that the interconnection proposals should apply to all CMRS providers.

In revising Section 332 of the Act, as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), Congress mandated regulatory symmetry among similar mobile services. CMRS Second R&O at ¶ 12. Congress required that the FCC replace the existing regulations with a comprehensive, consistent regulatory framework that gives the FCC flexibility to establish appropriate levels of regulation for mobile services. Id. In other words, Congress wanted similar services to be subject to consistent regulatory treatment.

To this end, in the CMRS Second R&O, the FCC reclassified all for profit mobile service, interconnected to the public switched network, and available to the public as CMRS. CMRS Second R&O at ¶ 43. The FCC also determined that all CMRS providers are currently or potentially competing services, therefore, all CMRS providers are substantially similar. CMRS Third R&O at ¶ 12. The FCC noted that this broad term "substantially similar" promotes uniformity in CMRS regulation and, minimizes "the potentially distorting effect of asymmetrical regulation." Id. at ¶ 13.

The FCC's continued mandate to establish regulatory symmetry holds true in the context of interconnection compensation. In the CMRS Orders, the FCC went to great lengths to show that all CMRS providers are substantially similar, and thus, should be subject to consistent regulatory treatment. The FCC would now have a high statutory hurdle to clear, to substantiate applying interconnection regulations to only select subcategories of CMRS providers. PCS,

cellular, SMR and paging should all be included in interconnection policy. To do otherwise would be inconsistent with federal policy mandated in the CMRS Orders and in this proceeding.

Furthermore, the interconnection regulations adopted in this proceeding should be forward thinking. We are not very far from the day when CMRS providers will be seeking interconnection arrangements from PCS providers or cellular providers. The distinctions between services offered by PCS, broadband, and narrowband are becoming less and less obvious every day. It is necessary to adopt rules that will be useful in the future. For instance, a paging company should be able to request interconnection from a cellular carrier, just as it does from an LEC. Any interconnection policy adopted in this proceeding should be applicable to these future scenarios.

Conclusion

For all the foregoing reasons, Celpage respectfully requests that the Commission adopt mandatory interconnection compensation policies applicable to all CMRS providers, including a cost-based compensation mechanism for narrowband providers, with public disclosure of interconnection arrangements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Regina Wingfield, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 4th day of March, 1996, copies of the foregoing Comments of Celpage, Inc. were mailed, postage prepaid, to the following:

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